



**THE ATTORNEY GENERAL  
OF TEXAS**

PRICE DANIEL  
ATTORNEY GENERAL

AUSTIN 11, TEXAS

February 15, 1949

Hon. Ray Kirkpatrick, Chairman  
Committee on Contingent Expenses  
House of Representatives  
51st Legislature  
Austin, Texas

Opinion No. V-772.

Re: Constitutionality of H. S. R.  
No. 17 relative to payment  
of a specific sum to mem-  
bers as contingent expenses.

Dear Sir:

The Resolution mentioned in the above subject matter  
is as follows:

**"HOUSE SIMPLE RESOLUTION**

Providing for the payment of the contingent expenses  
of the members of the House.

**BE IT RESOLVED BY THE HOUSE OF REPRESENT-  
ATIVES, that for the purpose of paying the contingent  
expenses of the members of the House each member  
of the House be allowed contingent expense funds in  
the sum of Ten (\$10.00) Dollars for each day, not ex-  
ceeding 120, of the Regular Session of the 51st Legis-  
lature; and, be it further**

**RESOLVED, that the said allowance for contin-  
gent expenses shall be paid to the members weekly  
by voucher and shall be chargeable to the Contingent  
Expense Account of the House of Representatives.**

With the funds so drawn and received, each  
member shall purchase his own stamps, stationery,  
books and usual items of supplies, except telephone

and telegraph expenses, and shall pay his other contingent expenses. The Committee on Contingent Expenses of the House shall provide rules and regulations for carrying out the purposes of this Resolution. Supply items drawn by the members from the House shall be charged to the member and paid for by him out of the allowance herein provided."

In Opinion No. V-84 this office considered the validity of a bill submitted by Hon. Claud Gilmer, Chairman, Committee on Appropriations of the House of the 50th Legislature, Sec. 1 of which we quote:

"There is hereby appropriated out of any funds in the State Treasury not otherwise appropriated, the sum of Three Hundred Thousand Dollars (\$300,000.00) or so much thereof as may be necessary, to pay incidental expenses of the members of the Regular Session of the 50th Legislature, such expenses not to exceed Ten Dollars (\$10.00) per day per member."

The opinion held that the bill was invalid for the want of a preexisting law therefor under Article III, Section 44 of the Constitution. The opinion further held that the bill was invalid as a gratuity to the individual members as the claims were for personal business of the respective members.

Many cases from other states are set out in Opinion No. 0-3778 holding that the Texas Legislature could not constitutionally vote its members \$50 a month for stenographic and other expense between sessions. Kansas, Oregon, and Washington cases have invalidated appropriations of \$5 per day to each member for expenses. Griffith v. Turner, 233 Pac. 510; State v. Clausen, 253 Pac. 805; Jones v. Hoss, 285 Pac. 205. Similarly the Arkansas Supreme Court invalidated an appropriation of \$100 per member for expenses while attending an extraordinary session. Ashton v. Ferguson, 261 S.W. 624.

The latest case is that of Scroggie v. Bates, 48 S.E.2d 634 (July 1948) by the Supreme Court of South Carolina. There the Legislature voted each member \$700 "as official expenses in connection with the 1947 session . . . and work between sessions . . ." The court held that:

"In providing that each member . . . shall be paid the same amount, that it be paid 'as official expenses in connection with the 1947 session' and 'work between sessions,' and finally in providing that the amount appropriated 'may be paid without the required itemization' . . . when considered together, make the conclusion inevitable without the aid of extrinsic facts and circumstances that the real intent and purpose of the appropriation . . . was to increase the compensation and per diem of the members . . . in violation of the Constitution of this State, and the statute is therefore void."

In a letter opinion of March 12, 1947, addressed to Hon. J. F. Ward, Chairman, Contingent Expense Committee, House of Representatives, Austin, in answering a similar question it was said: "The Contingent Expense Fund allotment is, of course, made for the purpose of meeting those comparatively small items of expense in connection with the sitting of the Legislature which are not foreseeable in kind or quantity, and properly so, in recognition of the fundamental policy that the Legislature must carry on in the discharge of its duties. In the nature of things, the allotment may not be resorted to except for those items of expenses that have a legitimate and real relevancy to the official service being performed. In other words, it means that the compensation or payment whatsoever must be for something for a public purpose rather than for the personal interest of the person paid whether he be an employee or Representative."

The language quoted indicated the real purpose of a contingent expense appropriation. This office adheres to the holdings above cited, and the principles therein involved. It is well known that \$10.00 per day is not adequate compensation for members of the Legislature, and the per diem should be increased. But to be valid it must be done by constitutional amendment rather than by a statutory expense allowance.

#### SUMMARY

The Legislature may not constitutionally increase its per diem by directing the payment to

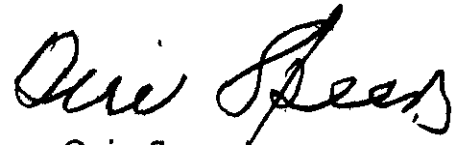
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each of its members the lump sum of \$10.00 per day  
for expenses during its regular session.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

By



Ocie Speer  
Assistant

OS:wb:erc

APPROVED:



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